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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,922	09/12/2003	Gil A. Sena	03-0034	7329

30550 7590 08/17/2005

BILL & MARY LOU INC.  
101 LOMBARD STREET #510 W  
SAN FRANCISCO, CA 94111

EXAMINER
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BATSON, VICTOR D

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/660,922	<b>Applicant(s)</b> SENA, GIL A.	
	<b>Examiner</b> Victor Batson	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-16 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,9,13 and 14 is/are rejected.
- 7) ☒ Claim(s) 3,4,6-8,15 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### ***Response to Amendment***

The amendment filed 6/10/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The amendment to figure 1 contains new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

Claims 1-4,6-8,13-16 are objected to because of the following informalities: In claim 1 line 10, it appears that "is" should be inserted before "surrounded". In claim 2, the amendment improperly includes two periods. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,9,13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williames (6,327,986) in view of Bouldin et al. (5,860,372).

Williames discloses a seedling planting apparatus comprising a tractor connection (not shown but disclosed in column 1 lines 61-62), means for adjusting planted seedling spacing (considered the microprocessor control described in column 3 lines 41-46), individual seedling extraction (fig. 3b) and a means for seedling positioning and planting (fig. 16). Williames however lacks a seedling tray size or spacing adjustment.

Bouldin et al. teaches that it is known in the art for a seedling handling apparatus to use a tray-handling device that allows the device to handle various sized trays (col 2, lines 7-13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Williames by using a tray handling apparatus that allows for tray size adjustment and tray spacing adjustment, to allow the device to be adaptable to various sizes and types of trays and plants as taught by Bouldin et al..

Concerning claim 2, the examiner takes official notice that the use of a tractor hydraulic system to power a trailing implement is notoriously old and well known in the agricultural art as it reduces the implements weight by not requiring a stand alone hydraulic system. Similarly, the examiner takes official notice that tractor speed (engine speed used to operate a pump of a hydraulic system) as well as valve positioning is

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commonly used to vary hydraulic pressure within a common hydraulic system used in the agricultural art.

Concerning claim 9, the combination renders the claimed method steps obvious since such would be a logical manner of using the combination.

### ***Allowable Subject Matter***

Claims 3,4,6-8,15,16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 6/10/05 have been fully considered but they are not persuasive. Applicant argues that Bouldin et al. does not teach that it is known in the art for a seedling handling apparatus to use a tray-handling device that allows the device to handle various sized trays as set forth by the examiner. Applicant further argues that Bouldin et al., teaches a device for removing seedlings from a first tray to a second tray. The examiner agrees with applicant's discussion on the device of Bouldin et al., but notes that Bouldin et al., suggests modifying a planting apparatus to be adaptable to various sized and type trays. This suggestion is in addition to the disclosed device and

in addition to other desired modifications which is why Bouldin et al., states "Further, it would be desirable to develop..."

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 11, 2005

A handwritten signature in black ink, appearing to read "Victor Batson". The signature is fluid and cursive, with the first name "Victor" and last name "Batson" clearly distinguishable.

Victor Batson  
Primary Examiner  
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